



Statement Regarding the Effect of the U.S. Supreme Court's Decision in
Citizens United v. FEC on Pennsylvania Law

March 4, 2010

The U.S. Supreme Court's decision in *Citizens United v. FEC*, issued on January 21, 2010, affects the constitutionality of several provisions of the Pennsylvania Election Code relating to campaign finance and disclosure. Others are left unaffected. This statement of the Pennsylvania Department of State provides a summary of the *Citizens United* decision and the Department's view of its impact on Pennsylvania law.

Summary of the Decision of the U.S. Supreme Court in *Citizens United v. FEC*

(1) In *Citizens United v. FEC*, the U.S. Supreme Court ruled that the provisions of the Federal Election Campaign Act (FECA) that prohibit corporations and labor unions from making "independent expenditures" in support of advertisements that advocate the election or defeat of a candidate for public office are **unconstitutional** under the First Amendment.

(2) The Court in *Citizens United* expressly declared to be **constitutional** the provisions of FECA that require all persons and entities to include with their political ads disclaimers that reveal the identity of the person or organization that paid for the advertisement.

(3) *Citizens United* also upheld as **constitutional** the provisions of FECA that require all persons and entities to file reports with the FEC detailing their campaign expenditures.

(4) The Court in *Citizens United* left **undisturbed** the provisions of FECA that prohibit corporations and labor unions from making contributions to candidates and political committees or coordinating their expenditures with candidates and political committees. The Supreme Court in previous decisions has held these provisions to be **constitutional**.

(5) The Court left **intact** the ability of corporations and labor unions to establish separate segregated funds or political action committees (PACs), which can make contributions to candidates and other political committees and to coordinate their expenditures with candidates and other political committees.

(6) The Supreme Court in *Citizens United* expressly left **undecided** whether the government constitutionally may prohibit foreign individuals or foreign corporations from making expenditures influencing the political process.

Effects on Pennsylvania Campaign Finance Law

Citizens United v. FEC affects several provisions of the Pennsylvania Election Code relating to campaign finance:

(1) *Section 1633 of the Pennsylvania Election Code (relating to contributions or expenditures by national banks, corporations or unincorporated associations).*

- Section 1633(a) of the Election Code prohibits any corporation organized under the laws of any state or foreign country and any unincorporated association (including a labor union), except those corporations formed primarily for political purposes or as a political committee, to make a contribution or expenditure in connection with the election of any candidate or for any political purpose whatever, except in connection with any question to be voted on by the electors of the Commonwealth. *See* 25 P.S. § 3253(a).
- **Under *Citizens United*, section 1633(a) cannot be administered constitutionally to prohibit a domestic corporation or unincorporated association from making “independent expenditures.”** An “independent expenditure” is defined at section 1621(e) of the Pennsylvania Election Code to mean “an expenditure by a person made for the purpose of influencing an election without cooperation or consultation with any candidate or any political committee authorized by that candidate and which is not made in concert with or at the request or suggestion of any candidate or political committee or agent [of a candidate or political committee].” 25 P.S. § 3241(e).
- The provisions of section 1633(a) prohibiting expenditures **other than “independent expenditures,”** *e.g.*, expenditures made in cooperation or consultation with a candidate or candidate’s political committee; or expenditures made in concert with or at the request or suggestion of a candidate, a candidate’s political committee or an agent of the candidate or political committee, **remain in full force and effect.**
- The provision of section 1633(a) prohibiting any expenditure (including independent expenditures) by a corporation organized under the laws of a foreign country **remains in full force and effect.**
- That part of section 1633(a) of the Election Code that prohibits banks, corporations and unincorporated associations (including labor unions) from making “contributions” **remains in full force and effect.** The term “contribution” is defined at section 1621(b) of the Election Code as including, among other things, “any payment, gift, subscription, assessment, contract, payment for services, dues, loan, forbearance, advance or deposit of money or any valuable thing, to a candidate or political committee for the purpose of influencing any election in this Commonwealth....” 25 P.S. § 3241(b).

- Corporations and unincorporated associations remain able under section 1633(c) of the Election Code to establish and administer separate segregated funds or political action committees (PACs). *See* 25 P.S. § 3253(c).

(2) *Section 1638 of the Pennsylvania Election Code (relating to advertising).*

- Section 1638(a) of the Election Code, requiring “disclaimers” identifying who paid for or authorized political advertising, is **constitutional** under *Citizens United* and **remains in full force and effect**.
- Section 1638(a) provides, *inter alia*, that “whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a candidate, or ballot questions, through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising,” such communication must “clearly and conspicuously state the name of the person who made or financed the expenditure for the communication.” 25 P.S. § 3258(a)(2).

(3) *Section 1626(g) of the Pennsylvania Election Code (relating to reporting by candidate and political committees and other persons).*

- Section 1626(g) of the Election Code is **constitutional** under *Citizens United* and **remains in full force and effect**.
- Section 1626(g) requires “[e]very person, other than a political committee or candidate, who makes independent expenditures expressly advocating the election or defeat of a clearly identified candidate, or question appearing on the ballot, other than by contribution to a political committee or candidate, in an aggregate amount in excess of one hundred dollars (\$100) during a calendar year [to] file with the appropriate supervisor, on a form prepared by the Secretary of the Commonwealth, a report which shall include the same information required of a candidate or political committee receiving such a contribution and, additionally, the name of the candidate or question supported or opposed.” 25 P.S. § 3246(g). Reports required by section 1626(g) must be filed on dates on which reports by political committees making expenditures are required to report under that section.

Questions about the Department of State’s administration of the campaign finance law under *Citizens United v. FEC* may be directed to the Department’s Bureau of Commissions, Elections and Legislation, Division of Campaign Finance and Lobbying Disclosure by telephone at 717-787-5280 or via email at RA-stcampaignfinance@state.pa.us.